

§ 105-236. Penalties; situs of violations; penalty disposition.

- (a) Penalties. – The following civil penalties and criminal offenses apply:
- (1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.
 - (1a) Penalty for Bad Electronic Funds Transfer. – When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.
 - (1b) Making Payment in Wrong Form. – For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.
 - (2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars (\$5.00). In cases in which the taxpayer, after written notification by the Department, fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars (\$1,000).
 - (3) Failure to File Return. – In case of failure to file any return on the date it is due, determined with regard to any extension of time for filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in aggregate.
 - (4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ten percent (10%) of the tax. This penalty does not apply in any of the following circumstances:
 - a. When the amount of tax shown as due on an amended return is paid when the return is filed.
 - b. When the Secretary proposes an assessment for tax due but not shown on a return and the tax due is paid within 45 days after the later of the following:

1. The date of the notice of proposed assessment of the tax, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.
 2. The date the proposed assessment becomes collectible under one of the circumstances listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review of the proposed assessment.
- c. When a taxpayer timely files a consolidated or combined return at the request of the Secretary under Part 1 of Article 4 of this Chapter and the tax due is paid within 45 days after the latest of the following:
1. The date the return is filed.
 2. The date of a notice of proposed assessment based on the return, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.
 3. The date the Departmental review of the proposed assessment ends as a result of the occurrence of one of the actions listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review.
- (5) Negligence. –
- a. Finding of negligence. – For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.
 - b. Large individual income tax deficiency. – In the case of individual income tax, if a taxpayer understates taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code.
 - c. Other large tax deficiency. – In the case of a tax other than individual income tax, if a taxpayer understates tax liability by twenty-five percent (25%) or more, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency.
 - d. No double penalty. – If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency.
 - e. Repealed by Session Laws 2013-316, s. 7(c), effective January 1, 2013, and applicable to estates of decedents dying on or after that date.
 - f. Consolidated or combined return. – The amount of tax shown as due on a consolidated or combined return filed at the request of the Secretary under Part 1 of Article 4 of this Chapter is not considered a deficiency and is not subject to this subdivision unless one or more of the following applies:
 1. The return is an amended consolidated or combined return that includes the same corporations as the initial consolidated or combined return filed at the request of the Secretary. In this case the deficiency is the extent to which the amount shown as due on the amended return exceeds the amount shown as due on the initial return.

2. Repealed by Session Laws 2011-390, s. 5, effective January 1, 2012.
 3. Pursuant to a written request from a taxpayer, the Secretary has provided written advice to that taxpayer stating that the Secretary will require a consolidated or combined return under the facts and circumstances set out in the request, and the Secretary requires a taxpayer to file a consolidated or combined return under G.S. 105-130.5A because the taxpayer's facts and circumstances meet those described in the written advice.
- (5a) Misuse of Exemption Certificate. – For misuse of an exemption certificate by a purchaser, the Secretary shall assess a penalty equal to two hundred fifty dollars (\$250.00). An exemption certificate is a certificate issued by the Secretary that authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale. Examples of an exemption certificate include a certificate of exemption, a direct pay certificate, and a conditional exemption certificate.
 - (5b) Road Tax Understatement. – If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.
 - (6) Fraud. – If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.
 - (7) Attempt to Evade or Defeat Tax. – Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.
 - (8) Willful Failure to Collect, Withhold, or Pay Over Tax. – Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of six years after the date of the violation.
 - (9) Willful Failure to File Return, Supply Information, or Pay Tax. – Any person required to pay any tax, to file a return, to keep any records, or to supply any information, who willfully fails to pay the tax, file the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, is, in addition to other penalties provided by law, guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision is barred before the expiration of six years after the date of the violation.
 - (9a) Aid or Assistance. – Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, is guilty of a felony as follows:

- a. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is one hundred thousand dollars (\$100,000) or more, the person is guilty of a Class C felony.
 - b. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is less than one hundred thousand dollars (\$100,000), the person is guilty of a Class F felony.
 - c. If the person who commits an offense under this subdivision is not covered under sub-subdivision a. or b. of this subdivision, the person is guilty of a Class H felony.
- (9b) Identity Theft. – A person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently utilize that information in a submission to the Department to obtain anything of value, benefit, or advantage for themselves or another is guilty of a Class G felony. If the person whose identifying information is obtained, possessed, or used by another in this manner suffers any adverse financial impact as a proximate result of the offense, then the person who obtained, possessed, or used the identifying information is guilty of a Class F felony. Each person's identity obtained, possessed, or used in this manner shall count as a separate offense. The term "identifying information" as used in this subdivision includes the following:
- a. Legal name.
 - b. Date of birth.
 - c. Social Security Number.
 - d. Taxpayer Identification Number.
 - e. Federal Identification Number.
 - f. Bank account numbers.
 - g. Federal or State tax or tax return information.
- (10) Penalties Regarding Informational Returns. – The following penalties apply with regard to an informational return required by Article 2A, 2C, 4, 4A, 5, 9, 36C, or 36D of this Chapter:
- a. Repealed by Session Laws 1998-212, s. 29A.14(m), effective January 1, 1999.
 - b. Repealed by Session Laws 2018-5, s. 38.10(p), effective June 12, 2018.
 - c. For failure to file with the Secretary by the date the return is due, the Secretary shall assess a penalty of fifty dollars (\$50.00) per day, up to a maximum penalty of one thousand dollars (\$1,000).
 - d. For failure to file in the format prescribed by the Secretary, the Secretary shall assess a penalty of two hundred dollars (\$200.00).
- (10a) Filing a Frivolous Return. – If a taxpayer files a frivolous return under Part 2 of Article 4 of this Chapter, the Secretary shall assess a penalty in the amount of up to five hundred dollars (\$500.00). A frivolous return is a return that meets both of the following requirements:
- a. It fails to provide sufficient information to permit a determination that the return is correct or contains information which positively indicates the return is incorrect, and

b. It evidences an intention to delay, impede or negate the revenue laws of this State or purports to adopt a position that is lacking in seriousness.

(10b) Misrepresentation Concerning Payment. – A person who receives money from a taxpayer with the understanding that the money is to be remitted to the Secretary for application to the taxpayer's tax liability and who willfully fails to remit the money to the Secretary is guilty of a Class F felony.

(11) Repealed by Session Laws 2006-162, s. 12(b), effective July 24, 2006.

(12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – A violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1. (1939, c. 158, s. 907; 1953, c. 1302, s. 7; 1959, c. 1259, s. 8; 1963, c. 1169, s. 6; 1967, c. 1110, s. 9; 1973, c. 476, s. 193; c. 1287, s. 13; 1979, c. 156, s. 2; 1985, c. 114, s. 11; 1985 (Reg. Sess., 1986), c. 983; 1987 (Reg. Sess., 1988), c. 1076; 1989, c. 557, ss. 7 to 10; 1989 (Reg. Sess., 1990), c. 1005, s. 9; 1991, c. 45, s. 27; 1991 (Reg. Sess., 1992), c. 914, s. 2; c. 1007, s. 10; 1993, c. 354, s. 22; c. 450, s. 10; c. 539, ss. 709, 710, 1292, 1293; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 390, s. 36; 1995 (Reg. Sess., 1996), c. 646, s. 10; c. 647, s. 51; c. 696, s. 1; 1997-6, s. 8; 1997-109, s. 3; 1998-178, ss. 1, 2; 1998-212, s. 29A.14(m); 1999-415, ss. 2, 3; 1999-438, ss. 15, 16; 2000-119, s. 2; 2000-120, s. 7; 2000-140, s. 70; 2002-106, ss. 2, 4; 2005-276, s. 6.37(n); 2005-435, s. 1; 2006-162, s. 12(b); 2007-491, s. 26; 2008-107, s. 28.18(b); 2010-31, s. 31.10(a), (b); 2011-330, s. 32; 2011-390, s. 5; 2011-411, s. 8(b); 2012-79, s. 2.18(a); 2013-316, s. 7(c); 2013-414, s. 1(h); 2014-3, s. 3.1(c); 2015-259, s. 7.1(b); 2017-204, s. 3.1(a); 2018-5, s. 38.10(p); 2018-98, s. 2(a); 2019-169, ss. 5.2(a), 6.8.)